

25B. Document Provision, Non-standardized plans only

Statement of Requirement: Profit-sharing plan – Cross-tested allocation formula, Regs. 1.401(a)(4)-8(b), 1.410(b)-6(f), Rev. Proc. 2005-16 section 5.04

Sample Plan Language:

Employer contributions for a plan year will be allocated to each employee of the employer who is employed as of the last day of the plan year. The general nondiscrimination test under section 1.401(a)(4)-2(c)(1) must be satisfied using equivalent accrual rates (within the meaning of 1.401(a)(4)-8(b)(2)) that are substituted for each employee's allocation rate in the determination of rate groups. The allocation rate for any employee is equal to the sum of employer nonelective contributions and any forfeitures allocated to the employee's account, divided by the employee's compensation as defined in section _____ of the plan. When calculating equivalent accrual rates for purposes of nondiscrimination testing, a standard interest rate and standard mortality table (within the meaning of the definitions in 1.401(a)(4)-12) must be used.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31.)

The allocation methodology used in determining an employee's individual allocation will satisfy one of the following three allocation rules, as selected in the Adoption Agreement:

(1) Minimum allocation gateway. Each nonhighly compensated employee has an allocation rate that is equal to the lesser of 5% of the employee's compensation (as defined in section _____ of the plan), or one-third of the allocation rate of the highly compensated employee with the highest allocation rate. The allocation rate for each group of highly compensated employees will be as selected in the Adoption Agreement.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31. Generally, this is the simplest option in order to use cross tested formulas.)

(2) Broadly available allocation rates. Each allocation rate will be currently available (within the meaning of section 1.401(a)(4)-4(b)(2)) to a group of employees that satisfies section 410(b) without regard to the average benefit percentage test. If two allocation rates are permissively aggregated under 1.401(a)(4)-4(d)(4), they are aggregated and treated as a single allocation rate. The disregard of the age and service conditions of section 1.401(a)(4)-4(b)(2)(ii)(A) does not apply for purposes of this paragraph. The allocation rate for each group of employees will be as selected in the Adoption Agreement.

(3) Gradually increasing age or service schedule. Each allocation rate increases smoothly at regular intervals within a series of bands based solely on age, based solely on years of service, or based on the number of points representing the sum of age and service (age and service points), as designated in the Adoption Agreement, such that same allocation rate applies to all employees whose age, years of service, or age and service points are within each band. If age-only bands are used, all participants younger than age 25 are deemed to be in the first band. If the age and service point band is used, all participants with a sum of age and service that is less than 25 are deemed to be in the first band.

Sample Adoption Agreement Language:

(Note to reviewer: Select one of the following allocation rules. If the gradually increasing age and/or age or service allocation rule is selected, select one of the 3 allocation bands within that rule.)

The allocation rates will satisfy the following allocation rule:

A. ☐ Minimum allocation gateway

The allocation rate for Group A highly compensated employees will be _____%.

The allocation rate for Group B highly compensated employees will be _____%.

The allocation rate for Group C highly compensated employees will be _____%.

The allocation rate for Group D highly compensated employees will be _____%.

The allocation rate for Group E highly compensated employees will be _____%.

(Note to reviewer: Enter the allocation rates for each highly compensated employees group in each blank. The maximum allocation rate for the highly compensated employee with the highest allocation rate must not be more than 3 times the allocation rate of the nonhighly compensated employees.)

B. ☐ Broadly available allocation schedule

The allocation rate for Group A employees will be _____%.

The allocation rate for Group B employees will be _____%.

The allocation rate for Group C employees will be _____%.

The allocation rate for Group D employees will be _____%.

The allocation rate for Group E employees will be _____%.

(Note to reviewer: Enter the allocation rate in each blank. Each broadly available allocation rate must be currently available within the meaning of section 1.401(a)(4)-4(b)(2) to each group on a basis that satisfies section 410(b) without regard to the average benefit percentage test.)

C. () Gradually increasing age and/or service schedule

() Age-only bands

First age band: Age-only bands commence with ages less than 25 as the first allocation band with an allocation rate of ____%.

Subsequent allocation rate bands are as follows:

At least age 25 but less than 30 with an allocation rate of ____%,
At least age 30 but less than 35 with an allocation rate of ____%,
At least age 35 but less than 40 with an allocation rate of ____%,
At least age 40 but less than 45 with an allocation rate of ____%,
At least age 45 but less than 50 with an allocation rate of ____%,
At least age 50 but less than 55 with an allocation rate of ____%,
At least age 55 but less than 60 with an allocation rate of ____%,
At least age 60 but less than 65 with an allocation rate of ____%,
At least age 65 with an allocation rate of ____%.

(Note to reviewer: Enter the starting allocation rate in the first blank, and the allocation rates for each age-only band in the following 9 blanks.

The schedule of allocation rates must have regular intervals such that each band, other than the band associated with the lowest and highest ages, is the same length.

The allocation rate for each band must be greater than the allocation rate for the immediately preceding band (i.e., the band with the next lower number of years of age but by no more than 5 percentage points. However, the ratio of the allocation rate for any band to the rate for the immediately preceding band must not exceed 2.0 and also must not exceed the ratio of allocation rates between the two immediately preceding bands.)

() Years-of-service-only bands:

First years-of-service-only band: Years-of-service-only bands commence with less than one year of service as the first allocation rate band with an allocation rate of ____%.

Subsequent allocation rate bands are as follows:

At least one but less than 5 years of service with an allocation rate of ____%,
At least 5 but less than 10 years of service with an allocation rate of ____%,
At least 10 but less than 15 years of service with an allocation rate of ____%,

At least 15 but less than 20 years of service with an allocation rate of ____%,
At least 20 but less than 25 years of service with an allocation rate of ____%,
At least 25 but less than 30 years of service with an allocation rate of ____%,
and at least 30 years of service with an allocation rate of ____%.

(Note to reviewer: Enter the starting allocation rate in the first blank, and the allocation rates for each year-of-service-only band in the 7 following blanks.

The schedule of allocation rates must have regular intervals such that each band, other than the first band and the band associated with the highest years of service, is the same length. The allocation rate for each band must be greater than the allocation rate for the immediately preceding band (i.e., the band with the next lower number of years of service but by no more than 5 percentage points. However, the ratio of the allocation rate for any band to the rate for the immediately preceding band must not exceed 2.0 and also must not exceed the ratio of allocation rates between the two immediately preceding bands.)

() Age and service point band

First age and service band: Age and service points bands commence with the sum of age and service of less than 25 as the first allocation band with an allocation rate of ____ %.

Subsequent allocation rate bands are as follows:

at least 25 but less than 30 with an allocation rate of ____%,
at least 30 but less than 35 with an allocation rate of ____%,
at least 35 but less than 40 with an allocation rate of ____%,
at least 40 but less than 45 with an allocation rate of ____%,
at least 45 but less than 50 with an allocation rate of ____%,
at least 50 but less than 55 with an allocation rate of ____%,
at least 55 but less than 60 with an allocation rate of ____%,
at least 60 but less than 65 with an allocation rate of ____%,
at least 65 but less than 70 with an allocation rate of ____%,
at least 70 but less than 75 with an allocation rate of ____%,
at least 75 but less than 80 with an allocation rate of ____%,
at least 80 but less than 85 with an allocation rate of ____%,
at least 85 with an allocation rate of ____%.

(Note to reviewer: Enter the starting allocation rate in the first blank, and the allocation rates for each age and service point band in the 13 following blanks.

The schedule of allocation rates must have regular intervals such that each band, other than the first band and the band associated with the highest sum of age and years of service, is the same length. The allocation rate for each band must be greater than the allocation rate for the immediately preceding band (i.e., the band

with the next lower sum of age and years of service) but by no more than 5 percentage points. However, the ratio of the allocation rate for any band to the rate for the immediately preceding band must not exceed 2.0 and also must not exceed the ratio of allocation rates between the two immediately preceding bands.)